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## MEMORANDUM

**TO:** All Members

**FROM:** Advocacy and Public Policy Department

**DATE:** January 26, 2021

**SUBJECT:** Governor's Proposed 2021-22 Executive Budget

**ROUTE TO:** Administrator, Program Directors, Department Heads

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ABSTRACT: Detailed summary of 2021-22 Executive Budget provisions.

### **I. INTRODUCTION**

On Tues., Jan. 19, 2021, Governor Cuomo released his State Fiscal Year 2022 (FY22) budget plan, entitled [Reimagine | Rebuild | Renew](#). The proposed budget, which covers the period April 1, 2021 – March 31, 2022, seeks to close an estimated \$15 billion (\$15B) deficit over FY21 (estimated \$5B) and FY22 (estimated \$10B) while limiting the increase in State spending to 1.2 percent. The Executive Budget bills and legislative memoranda are available on the [Division of the Budget's \(DOB\) FY22 Executive Budget webpage](#).

The Executive Budget provides two alternative routes to close the budget deficit. The proposal assumes that New York State will receive an increase of at least \$6B in federal relief funding, requiring the State to cut and/or raise an additional \$9B to balance the budget. To do that, the Budget proposes increasing taxes for wealthy New Yorkers, delaying the implementation of middle-class tax cuts, reducing school aid by \$2B, cutting Medicaid by \$600M and implementing new revenue sources such as revenues from legalizing adult-use cannabis (estimated \$250M) and mobile sports wagering (estimated \$500M).

However, if New York receives a total of \$15B (rather than \$6B) in additional federal funding, as has been requested by the Governor, a number of the cuts and revenue-raising actions proposed will be unnecessary. Specifically, the Governor would withdraw the proposal to increase taxes for

wealthy New Yorkers, continue middle-class tax cuts as scheduled and increase education and health care spending. In order to allow for these potential restorations, a contingency appropriation was included in the Executive Budget. If the State receives federal funding in an amount between \$6B and \$15B by March 31, 2021, some combination of the two proposals will likely be advanced.

The following is a summary of the health, Medicaid and housing proposals advanced by the Governor. Part II of the memo covers proposals affecting multiple service lines, Part III covers proposals relating to workforce and employment, Part IV describes service line-specific proposals, Part V covers pharmacy-related issues, Part VI covers legalization and regulation of marijuana and Part VII covers data accountability and transparency. As you will see, there are several issues of importance to the LeadingAge NY membership that will require advocacy efforts as we head into budget deliberations. The memo concludes with more information on our advocacy participation needs from our members.

## **II. CROSS-SECTOR HEALTH CARE INITIATIVES**

The following proposals impact multiple types of Medicaid providers and managed care plans and should be reviewed by all readers. Budget proposals affecting specific service lines are summarized in Part IV below.

### **Medicaid Spending and Across-the-Board Cut**

Total federal, State and local Medicaid spending, including spending outside the Medicaid Global Spending Cap (Global Cap), is expected to be \$82.9B in FY22; this includes \$48.1B in federal spending and \$27.6B in State and local spending.

The proposed budget reflects a 1 percent across-the-board (ATB) reduction to Medicaid payments. This cut will generate an estimated \$188M in all funds savings in FY22 and another \$188M in FY23. However, the Executive Budget indicates that the ATB cut and other cuts would be eliminated if the State receives its full federal funding request of \$15B.

### **Medicaid Global Spending Cap**

The Executive Budget proposes to extend the Global Cap, including the State's "superpower" authority to make spending reductions if the Global Cap is breached, through March 31, 2023. The Global Cap places an overall limitation on State Medicaid expenditures made through the Department of Health (DOH) and limits growth in these expenditures to the 10-year rolling average increase in the Medical Consumer Price Index (CPI).

Accordingly, the Executive Budget allows for the continued growth within the cap at a rate of 2.9 percent, for a total cap of \$20.57B, an increase of \$579M.

## **Medicaid Trend Factor**

The Executive Budget proposes to extend for two more years, through March 31, 2023, the elimination of positive Medicaid inflation factors for providers including hospitals, nursing homes (other than pediatric units), Adult Day Health Care (ADHC) programs, home care and personal care providers and Assisted Living Programs (ALPs).

## **Medicaid Payment Lag**

The Executive Budget proposes a return of all non-distressed Medicaid providers to the two-week Medicaid payment lag, generating \$150M in all funds savings.

## **1115 Waiver**

The Executive Budget includes the submission of an application for an extension to the Medicaid 1115 waiver and resubmission of the 1115 Delivery System Reform Incentive Payment (DSRIP) Program waiver amendment that was rejected by the Trump administration. The new 1115 extension request is for three years and includes the carve-out of pharmacy services from managed care to fee-for-service as well as the State's transition from an Administrative Services Organization model to a Broker model for non-emergency medical transportation. The State's revised DSRIP request will address value-based payments, telehealth, workforce, health equity and social determinants of health. The State will also request additional support to assist in its COVID-19 response through this waiver amendment.

## **Minimum Wage Funding**

To support the direct cost of the minimum wage increases enacted in FY17, the Executive Budget includes \$2B in funding for Medicaid-funded services provided by home care agencies, nursing homes, ALPs, hospices, hospitals and other providers reimbursed through DOH. This includes funding to reconcile any underpayments in prior years identified through surveys of providers.

This is year five of the six-year phase-in of the requirements enacted in April 2016 as part of the State Minimum Wage Act. Under the Act, the minimum wage in New York City (NYC) reached \$15 per hour as of Dec. 31, 2019, while growth continues toward a \$15 minimum wage outside of NYC. On Dec. 31, 2020, the minimum wage increased to \$14 in Westchester and Long Island and to \$12.50 in the rest of the state.

## **Vital Access Provider Program**

The Executive Budget would provide \$132M in funding for the Vital Access Provider (VAP) program. The VAP program provides temporary rate adjustments or lump sum payments to eligible providers to preserve access to services in areas experiencing provider restructuring, reconfiguration and/or closure. Applicants must demonstrate that funding would protect or enhance access, quality or health delivery and/or improve cost-effectiveness. VAP funds provide operational support and are not to support capital costs. Nursing homes and home care agencies along with hospitals and clinics are among the provider types eligible to apply for VAP funding.

## Statewide Health Care Facility Transformation Program

The Executive Budget would reauthorize the distribution of the remaining \$425.5M allocated to the Statewide Health Care Facility Transformation Program (SHCFTP) Phase III under the FY19 budget and reappropriated under the FY20 budget. The FY20 budget also authorized the transfer of up to \$300M of the Phase III funds to support applications submitted under Phase II that were not funded. Based on the \$100M reduction in the Phase III reappropriation between FY21 and the proposed FY22 budget, it appears that at least \$100M would remain for Phase III applications.

Phase III funding is to be made available for capital projects, debt retirement, working capital and other non-capital projects that facilitate health care transformation and expand access to health care services, including a merger, consolidation, acquisition or other action intended to create financially sustainable systems of care or preserve or expand essential health care services. The proposed budget does not set any deadlines for DOH to issue a request for applications or to award the remaining funds under Phase III, nor does it propose changes to the allocation of funds enacted under the FY19 budget.

The following allocation would remain in place:

- At least \$60M is allocated to community-based health care providers, which includes home care agencies, hospices and other provider types.
- At least \$45M is allocated specifically to nursing homes.
- Up to \$20M of the funds not otherwise earmarked for community-based providers or nursing homes may be allocated to the solicitation process for additional ALP capacity.
- ALPs and adult care facilities (ACFs) are considered eligible applicants for SHCFTP funding not specifically earmarked in the above three categories.

## Access to Capital

- ***Bond Cap for Medical Facility Improvements:*** This proposal would increase the authority of the Dormitory Authority of the State of New York (DASNY) to issue bonds for health care facility construction projects from \$16.6B to \$17.4B, thereby expanding its ability to offer low-interest financing to support health care projects.
- ***DASNY Lending, Design and Construction Services:*** This proposal would expand DASNY's authority to make loans and provide design and construction services to not-for-profit corporations and school districts to support capital projects of at least \$5M.

## New York State of Health

The Executive Budget includes \$442M in total funding for the operation of New York State of Health (NYSOH) in FY22. NYSOH serves as a centralized marketplace to shop for, compare and enroll in a health insurance plan.

## Health Information Technology Infrastructure

The Executive Budget proposes to continue the following investments in health information technology (HIT) that were initiated in the FY15 enacted budget:

- ***SHIN-NY Support:*** Appropriates \$30M for the Statewide Health Information Network for New York (SHIN-NY), an electronic health information highway to permit the sharing of health information among health care providers across the state. The New York eHealth Collaborative administers the funding for the SHIN-NY and Qualified Entities.
- ***Claims Database:*** Appropriates \$10M in funding for the All Payer Claims Database, which serves as a repository for health care utilization and spending data that can be used to evaluate the performance of the health care delivery system.
- ***State HIT Initiatives:*** Appropriates \$10M in annual funding for HIT initiatives that target DOH's technology needs.

## COVID-19 Response

The State estimates the cost of the COVID-19 pandemic on FY22 to be just over \$15B. Accordingly, the Executive Budget allocates \$15B to the continued support of the State's ongoing COVID-19 response efforts with the following measures:

- ***COVID-19 Vaccination and Testing:*** The Executive Budget seeks to leverage Wadsworth Laboratory's research capabilities and continue support of existing testing sites as well as the creation of a network of rapid testing locations designed to assist in reopening the economy. The proposed budget supports the statewide vaccination program to ensure the fair and equitable distribution of the vaccine to nearly 20 million New Yorkers at no cost, with a special focus on underserved and vulnerable populations.
- ***New York Public Health Corps:*** The Executive Budget proposes to establish a New York Public Health Corps program to support COVID-19 vaccination operations. It seeks to recruit 1,000 fellows to participate in the program, including students in undergraduate and graduate public health programs, nursing schools and medical and pharmaceutical schools; recent graduates; retired medical professionals; volunteer first responders; and other individuals who will receive public health training developed by Cornell University.
- ***Paid Leave for COVID-19 Vaccination:*** As described more fully in the "WORKFORCE AND EMPLOYMENT" section below, the Executive Budget proposes to require public and private employers to provide employees with paid leave for up to two COVID-19 vaccinations.

## Telehealth

The Executive Budget proposes to expand the scope of telehealth delivery of services through several proposals summarized below. These initiatives are anticipated to generate \$79M in savings (all funds) in the coming fiscal year and \$166M in FY23. The proposals take effect April 1, 2021 and include:

- Removing the originating site limitations in existing law and allowing patients to receive telehealth services from any location;
- Promoting health information access via the SHIN-NY by implementing a single, statewide SHIN-NY consent form approved by DOH;
- Creating an interstate licensure program, pursuant to regulations to be adopted by the Education Department in consultation with other agencies, to allow licensed staff in states in the Northeast region to provide telehealth services to New Yorkers in order to support telehealth access to specialties with provider access issues;
- Requiring health plans to offer a telehealth network adequate to meet the telehealth needs of insured individuals; and
- Requiring health care professionals, group practices, general hospitals and diagnostic and treatment centers to disclose whether they offer telehealth services.

## **Physician Misconduct**

The Executive Budget includes a number of provisions aimed at strengthening the physician licensure and professional discipline processes, including the following:

- Expands the requirements imposed on health care facilities, including nursing homes, to report to DOH any physician misconduct, impairment or incompetence to include a requirement to report to DOH any request they make to a staffing agency not to assign a physician to that facility due to misconduct, impairment, incompetence, etc.
- Provides for termination of the license of any physician who fails to register with the Education Department for two consecutive registration periods.
- Provides for criminal history record checks of applicants for physician licenses.
- Expands the conduct that constitutes professional misconduct.
- Authorizes the Commissioner of Health to promulgate regulations under the Professional Misconduct article of the Education Law.
- Strengthens investigative powers related to requiring individuals and entities to produce documents.
- Authorizes the issuance of warrants to inspect premises, equipment, computing devices, etc.
- Expands the circumstances in which the Commissioner may disclose information pertaining to a professional misconduct investigation.
- Requires publication of administrative warnings and consultations.
- Requires licensees to notify DOH within 24 hours of any charge or “event” that would constitute professional misconduct.
- Expands the grounds for summary action against a licensee and extends the time in which an administrative hearing must be conducted in relation to such action.
- Expands the information that must be reported for purposes of the physician profile.

### **III. WORKFORCE AND EMPLOYMENT**

The Executive Budget includes various provisions affecting the health care workforce and employers:

- ***Workforce Recruitment and Retention Funding:*** Workforce recruitment and retention (WRR) funding would be reduced by \$45M annually by cutting: (1) from \$50M to \$25M the annual appropriation for Medicaid rate increases for WRR to certified home health agencies (CHHAs), long term home health care programs (LTHHCPs), AIDS home care programs, hospice programs and Managed Long Term Care (MLTC) plans; (2) the hospice WRR rate add-on from 3 percent of the baseline Medicaid rate to 1.5 percent; and (3) by 50 percent the WRR add-on for CHHAs serving children and medically complex and fragile children, adolescents and young disabled adults under the CHHA pilot program and by LTHHCPs and AIDS home care programs. If enacted, this provision would take effect April 1, 2021.
- ***Paid Leave for COVID-19 Vaccination:*** This proposal would require all public and private employers to provide up to four hours of paid leave, at the employee's regular rate of pay, for up to two COVID-19 vaccinations for each employee. An employer that provides or arranges to provide a COVID-19 vaccination at the employee's workplace would need only to provide sufficient time for an employee to obtain the vaccine. Employers would be prohibited from taking retaliatory actions against any employee who would utilize this leave, but they would be able to request relevant documentation from an employee. If enacted, this provision would take effect April 1, 2021.
- ***Encourage Part-Time Work for Unemployed Individuals:*** This proposal would change the calculation for Unemployment Insurance (UI) benefits paid to claimants who work part-time (PT) while they seek full-time employment. The current UI system discourages claimants from supplementing their income by working PT while collecting benefits. Currently, a claimant's weekly UI benefit is reduced by 25 percent for each day worked, regardless of the amount paid or hours worked. The budget proposal would permit a claimant who is partially unemployed and eligible for benefits to be paid a reduced benefit amount equal to the difference between the claimant's benefit amount and that part of the claimant's wages for the week exceeding the greater of \$100 or 40 percent of the claimant's weekly benefit amount. This proposal would become effective one year after passage.
- ***Expand Child Care Affordability and Streamline Requirements:*** Families receiving child care subsidies must contribute to the cost of child care, calculated as a percentage of the family's income above the Federal Poverty Level (FPL). This percentage varies from 10 percent in some counties to 35 percent in others. This proposal would limit the co-payment of a family receiving child care services to 20 percent of their income above the FPL. In addition, it would remove several unnecessary or duplicative administrative burdens on child care providers, making it less costly to provide child care services and helping improve their availability. This provision would take effect April 1, 2021.
- ***Nurse Practitioner Modernization Act:*** This proposal would extend until 2027 the authorization for nurse practitioners with more than 3,600 hours of work experience to forego written practice agreements and written practice protocols with physicians, as long as they document collaborative relationships with physicians or hospitals who have agreed to maintain such relationships. This extension would take effect April 1, 2021.
- ***BSN in 10:*** The Governor's Budget Briefing Book includes a proposal to help nurses who have Associate Degrees to complete a Bachelor of Science Degree in Nursing (BSN) in

order to maintain licensure in New York State. Beginning in fall 2021, the State University of New York (SUNY) and City University of New York (CUNY) will implement priority admission to nursing programs to enable the 40,000 nurses and nursing candidates who require BSN credentials to maintain licensure.

- ***Criminal History Record Checks:*** The Executive Budget proposes \$3M for criminal history record checks (CHRCs) for non-licensed long-term care employees, including employees of nursing homes, CHHAs, LTHHCPs, AIDS home care providers, health homes and licensed home care services agencies (LHCSAs).

#### **IV. MANAGED CARE, LONG TERM CARE AND SENIOR SERVICES PROPOSALS**

##### **Managed Long Term Care**

- ***Recalculation of 2017-18 MLR:*** This administrative provision requires MLTC plans to recalculate the 2017-18 Medicaid Loss Ratio (MLR) to reflect retroactive rate adjustments. While impact will vary by plan, the provision is expected to generate gross savings of \$44.7M in FY22.
- ***COVID-19 Adjustment:*** DOH is implementing a retroactive COVID-19 adjustment to April 2020 MLTC plan rates based on estimated reductions in service utilization due to the pandemic. The adjustment impacts Partially Capitated and Medicaid Advantage Plus plans and is based on an analysis by the State’s contracted actuary, Deloitte, of costs in the first half of 2020 compared to the first half of 2019. The reduction includes projections of a graduated return of service utilization to pre-pandemic levels and incorporates a risk corridor mechanism in case the projections are inaccurate. The reduction is expected to provide a gross savings of \$440.1M in FY21 and an additional \$40.01M in FY22.
- ***Quality Pool:*** This administrative proposal would eliminate the remaining MLTC Quality Pool, resulting in an annual all funds savings of \$103.5M. Last year’s enacted budget reduced the Quality Pool by 25 percent and instituted a two-year lag.
- ***WRR Funding:*** The Executive Budget would reduce home care and personal care WRR funding effective April 1, 2021, resulting in gross savings of \$45M. See “WORKFORCE AND EMPLOYMENT” section above.

##### **Nursing Homes**

- ***Across-the-Board Cut:*** The Executive Budget would reduce Medicaid payments by 1 percent to providers, including nursing homes. This cut may be reduced or eliminated if the State receives requested federal funding. Note that this is in addition to the 1.5 percent ATB cut enacted in 2020. See “CROSS-SECTOR HEALTH CARE INITIATIVES” section above.
- ***Trend Factor Elimination & Extension of Medicaid Global Cap:*** The Executive Budget proposes to extend Global Cap provisions and the elimination of the Medicaid trend factor for an additional two years. See “CROSS-SECTOR HEALTH CARE INITIATIVES” section above.
- ***Distressed Nursing Home Funding:*** The Executive Budget would eliminate the Financially Distressed Nursing Home Investment Fund to achieve a \$30M savings while continuing the Distressed Provider Assistance Program enacted in last year’s budget. The Distressed Provider Assistance Program is aimed at supporting financially distressed nursing homes and hospitals and is funded through sales tax revenues from counties and

NYC. Under the program, counties are responsible for contributing their respective share and \$50M annually beginning April 15, 2020, while NYC is responsible for an amount of \$200M annually beginning in 2021.

- **Quality Pool:** The Executive Budget intends to increase the existing Nursing Home Quality Initiative with an emphasis on rewarding quality based on staffing practices.
- **Contract Staff:** The Executive Budget Briefing Book indicates that DOH will develop regulations that would require the review and approval of any contracted staffing arrangement between nursing homes and staffing agencies that provide or arrange for direct care staff. DOH will ensure that Medicaid reimbursement only includes staffing costs related to contract arrangements that comply with regulatory requirements and only to the extent that such costs are determined by the Department to be consistent with the rates paid for comparable employed clinical staff and/or with fair market value and commercial reasonableness.
- **E-prescribing Waivers:** The Executive Budget would limit the availability of e-prescribing waivers, while maintaining the authority of the Commissioner of Health to issue such waivers in exceptional circumstances. See “PHARMACY” section below.
- **Cash Receipts Assessment:** The Executive Budget would extend the reimbursable 6 percent cash receipts assessment for two years through March 31, 2023. The total assessment would remain 6.8 percent; authorization for the 0.8 percent portion does not require extension at this time.
- **Transformation Grant and Vital Access Provider Funding:** See “CROSS-SECTOR HEALTH CARE INITIATIVES” section above.
- **Medicaid Payment Lag:** See “CROSS-SECTOR HEALTH CARE INITIATIVES” section above.

## Home Care and Hospice Services

While this year’s Executive Budget does not propose significant programmatic changes like enacted through last year’s Medicaid Redesign Team II (MRT II) process, it does include a number of new funding cuts and the continuation of prior years’ cuts. The Executive Budget also implements a retroactive COVID-19 adjustment to April 2020 MLTC plan rates based on estimated reductions in service utilization due to the pandemic. This will likely have an effect on downstream providers such as home care agencies.

Specific reimbursement and fiscal proposals affecting home care and hospice services include:

- **Across-the-Board Cut:** The Executive Budget would reduce Medicaid payments by 1 percent, including to home care agencies. This cut may be reduced or eliminated if the State receives requested federal funding. Note that this is in addition to the 1.5 percent ATB cut enacted in 2020. See “CROSS-SECTOR HEALTH CARE INITIATIVES” section above.
- **Trend Factor Elimination:** See “CROSS-SECTOR HEALTH CARE INITIATIVES” section above. This proposal extends elimination of the trend factor for CHHAs, LTHHCPS and personal care services through the 2023 calendar year.
- **Statewide Health Care Facility Transformation Program Funding:** See “CROSS-SECTOR HEALTH CARE INITIATIVES” section above.

- **Minimum Wage Funding:** The Executive Budget continues to fund increases in the minimum wage associated with Medicaid-covered services, including funding to reconcile any identified underpayments in prior years. See “CROSS-SECTOR HEALTH CARE INITIATIVES” section above.
- **Workforce Recruitment and Retention Funding:** The Executive Budget reduces WRR funding by \$45M (all funds) annually for personal care service workers, CHHAs, LTHHCPS, AIDS home care programs, hospice and MLTC plans. See “WORKFORCE AND EMPLOYMENT” section above.
- **Bad Debt and Charity Care for Certified Home Health Agencies:** The Executive Budget would maintain this funding at the current level of \$1.7M and extend authorization for CHHAs to receive allowances for bad debt and charity care for two years, through June 30, 2023. Current eligibility for such funds is limited to voluntary non-profit, private propriety and publicly sponsored non-hospital-based CHHAs.
- **CHHA and LTHHCP Cap on Administrative and General Costs:** The Executive Budget proposes to extend the cap on Medicaid reimbursement for CHHA and LTHHCP administrative and general costs through March 31, 2023.
- **Electronic Visit Verification:** The Executive Budget projects \$40M (all funds) in Medicaid savings from the newly implemented Electronic Visit Verification (EVV) program that tracks and verifies visits by personal care aides and Consumer Directed Personal Assistants.
- **Nurse-Family Partnership:** The Executive Budget cuts funding to the Nurse-Family Partnership Program by 20 percent from last year’s level. In addition, the proposal cuts the \$800,000 added by the Legislature last year, resulting in an overall decrease of 36.8 percent in total available funding compared to last year.
- **Traumatic Brain Injury Waiver Program:** Services and expenses related to the Traumatic Brain Injury (TBI) waiver program are level-funded at \$11.5M.
- **Nursing Home Transition and Diversion Waiver Housing Subsidies:** The Executive Budget includes level funding of \$1.842M for housing subsidies through the Nursing Home Transition and Diversion (NHTD) waiver program.
- **Home Health Aide Registry:** The registry is level-funded at \$1.8M.

Programmatic initiatives affecting home care agencies and the people they serve include:

- **Paid Leave for COVID-19 Vaccination:** The Executive Budget proposes to require public and private employers to allow employees four hours of paid leave for up to two COVID-19 vaccinations. See “WORKFORCE AND EMPLOYMENT” section above.
- **Transportation Management in Managed Care:** The Executive Budget proposes to make permanent the provisions authorizing DOH to contract with Medicaid transportation vendors on behalf of local social services districts to achieve Medicaid cost savings.
- **Telehealth Reforms:** See “CROSS-SECTOR HEALTH CARE INITIATIVES” section above.

## Other Aging Services Initiatives and Funding

The Executive Budget recommends \$259.6M for aging services in FY22, maintaining the same level of funding authorized under the prior year’s budget. The following proposals relate to aging

services programs administered by the New York State Office for the Aging (NYSOFA) and DOH, most of which are designed to help seniors remain in their communities by providing access to education, food, housing services, counseling, caregiver support, transportation, socialization and more.

Specific proposals affecting aging services include:

- ***Expanded In-Home Services for the Elderly Program:*** The Executive Budget level-funds a \$65M appropriation for the Expanded In-Home Services for the Elderly Program (EISEP). This funding supports non-medical, in-home services; case management; non-institutional respite care; and ancillary services for functionally impaired older adults. The State hopes to increase delivery of personal care to aging New Yorkers through EISEP rather than relying on more costly Medicaid services for these individuals.
- ***Human Services COLA:*** The Executive Budget defers the cost of living adjustment (COLA) for all human service providers by one year to March 31, 2022. This includes SOFA, Office of Children and Family Services (OCFS), Office for People with Developmental Disabilities (OPWDD), Office of Addiction Services and Supports (OASAS) and Office of Mental Health (OMH) programs.
- ***Community Services for the Elderly:*** The proposed budget level-funds \$29.8M for the Community Services for the Elderly (CSE) program, \$2.4M more than proposed last year. It continues the exemption on the county share of the \$3.5M in additional funding that has been added to CSE over the past several fiscal years. In addition, the proposed budget provides \$1.1M in discrete transportation funding to CSE to provide localities with the flexibility to direct resources where they are needed most.
- ***Naturally Occurring Retirement Communities (NORCs) and Neighborhood NORCs:*** Level funding is proposed at \$2,027,500 for each of the two models and another \$2M for each category as enacted in last year's final budget.
- ***Alzheimer's Caregiver Supports:*** The Executive Budget proposes \$50M for care and support services for individuals living with Alzheimer's disease and other dementias, including additional respite and caregiver support services programs.
- ***NY Connects:*** The Executive Budget level-funds \$20.7M for the NY Connects program, which provides online resources and entry points to home and community-based services across the state.
- ***Wellness in Nutrition Program:*** The Wellness in Nutrition (WIN) program is funded at \$28.2M, approximately \$800,000 more than proposed and enacted last year. Formerly known as the Supplemental Nutrition Assistance Program, WIN provides home-delivered meals, some congregate meals and other nutrition-related services to eligible frail elderly, including residents of senior housing facilities.
- ***Social Adult Day Care:*** The Executive Budget provides level funding of \$1.072M for State grants for Social Adult Day Care (SADC) programs.
- ***Congregate Services Initiative:*** The Executive Budget level-funds the Congregate Services Initiative (CSI) at \$403,000. This program promotes wellness and ensures that older adults do not face unnecessary isolation and deterioration. It provides information and assistance, referral, transportation, nutrition, socialization, education, counseling and caregiver support to persons in senior centers and other congregate settings.

- ***Livable NY Initiative:*** The proposed budget level-funds this program at \$122,500. The program is aimed at helping local communities plan ahead and create neighborhoods that reflect the evolving needs and preferences of all their residents, including their aging population.
- ***Title XX Funding:*** The proposed budget maintains the same funding level as last year: \$66M. A portion of this funding has gone to support senior centers and senior services in NYC as well as Nassau, Steuben and Erie counties.
- ***Long Term Care Ombudsman Program:*** The Executive Budget level-funds this program at \$1.2M.
- ***Respite Services for the Elderly:*** This grant program is level-funded at \$656,000.
- ***Elder Abuse Investigations:*** The Executive Budget includes \$500,000 to expand Enhanced Multidisciplinary Teams (EMDTs) to investigate financial exploitation of the elderly.

Programmatic initiatives affecting senior services providers and the people they serve include:

- ***‘Ugly Food’ Initiative:*** The Executive Budget includes the creation of a pilot program in the mid-Hudson region that would see NYSOFA’s Area Agencies on Aging and their commercial kitchen sites intercept and redistribute nutritionally viable, but ugly, food surplus for processing and flash freezing. The counties identified for the pilot have highly active food rescue groups that will partner with the State on this pilot. The utilization of the statewide kitchens will be a valuable resource that will scale up the ability of Governor Cuomo’s landmark legislation to divert more food surplus from landfills and feed hungrier New Yorkers.
- ***Extend the Nourish NY Program:*** The Executive Budget continues the Nourish NY Initiative supporting New York’s regional food banks and local food providers’ ability to purchase surplus locally produced food and goods from New York farmers and dairy manufacturers and deliver it to New York families in need. To date, New York has provided \$35M for the Nourish NY program, in addition to annual funding of \$36.9M through the Hunger Prevention and Nutrition Assistance Program (HPNAP) administered by DOH. New investments included in the Executive Budget will bring the total funding commitment for the Nourish NY program to \$60M.

## **Adult Day Health Services**

The Adult Day Health Care Council (ADHCC) will continue to focus advocacy efforts on reopening medical model ADHC programs. These programs were instructed to close March 17, 2020. The following budget proposals are also of interest to ADHC providers:

- ***Social Adult Day Care Funding:*** Level-fund SADC support at \$1.072M, with preferences given to existing grantees.
- ***Telehealth and Medicaid Across-the-Board Cut:*** See “CROSS-SECTOR HEALTH CARE INITIATIVES” section above.

## Adult Care Facility and Assisted Living

In addition to some of the overarching proposals mentioned earlier in this document, the below are proposals that directly impact ACFs and assisted living (AL).

### ACFs

- **Quality Funding:** The Executive Budget eliminates the Enhancing the Quality of Adult Living (EQUAL) program. Last year, the program was bifurcated into two parts, an operational and capital program; this proposal eliminates both. Historically, the program has been funded at \$6.5M and designated to support quality of life initiatives for Supplemental Security Income (SSI) recipients living in ACFs.
  - It is notable that \$3.266M is reappropriated from this current fiscal year for the operational aspect of the EQUAL program, which has not yet been implemented or distributed. We do not see a reappropriation for the remaining \$3.266M for the capital program, also not yet paid out, for this current fiscal year.
- **SSI:** The Executive Budget does *not* include an increase in the State portion of the SSI benefit for ACF residents, aside from language authorizing a pass-through of the federal COLA. The federal COLA, if any, is applied on Jan. 1<sup>st</sup> of each year.
- **Enriched Housing Subsidy:** The Executive Budget would eliminate the enriched housing subsidy. In recent years, the program was funded at \$380,000 and paid \$115 per month per SSI recipient to operators of not-for-profit certified enriched housing programs to the degree that funding was available. The proposal does reappropriate \$380,000 from the current fiscal year, yet to be paid out to providers. If appropriations are not sufficient to meet such maximum monthly payments, the subsidy is reduced proportionately.
- **Criminal History Record Check Funding:** The Executive Budget includes \$1.3M for services and expenses related to CHRCs for ACFs, the same funding level as last year. LeadingAge NY is working to confirm that last year's CHRC funding is also reappropriated, given the delay in payment for CHRC submissions.
- **Capital Funding:** The Executive Budget reappropriates funds from the SHCFTP funding from previous budget years. We are exploring the implications for ACF and ALP providers. See "Statewide Health Care Facility Transformation Program" section above.

### ALPs

Below is a high-level summary of Medicaid proposals for the ALP; more information regarding Medicaid is found elsewhere in this document.

- **One Percent Reduction:** The Executive Budget includes a 1 percent ATB reduction to ALP Medicaid payments and those of other Medicaid providers, which would be eliminated if New York receives \$15B from the federal government.
- **Trend Factor Elimination:** The Executive Budget provides no trend factor for the ALP Medicaid rate once again.
- **Minimum Wage:** The Executive Budget includes nearly \$2B to support the direct cost of the FY22 minimum wage increases for health care workers that provide Medicaid-

reimbursed services. This includes funding to reconcile any identified underpayments in prior years.

### **Transitional Adult Homes and Related Issues**

The below items may be of interest to ACF/AL providers that serve people with mental illness.

- ***Transitioning Mentally Ill Individuals Out of Transitional Adult Homes:*** \$60M is again appropriated for services and expenses associated with the provision of education, assessments, training, in-reach, care coordination, supported housing and services needed by mentally ill residents of adult homes and persons with mental illness who are discharged from adult homes.
- ***Mental Health Transitions:*** Up to \$7M is again appropriated to the Research Foundation for Mental Hygiene, in contract with OMH, for two demonstration programs. One program would be a behavioral health care management program for persons with serious mental illness, and the other would be a mental health and health care coordination demonstration program for persons with mental illness who are discharged from impacted adult homes in NYC. In addition, up to \$15M would again be made available for grants to counties and NYC to provide medication and other services necessary to prescribe and administer medication.

### **Other Issues of Interest to ACF/AL Providers**

The below items may be of interest to ACF/AL providers but do not have a direct impact on them.

- ***Adult Home Advocacy Program:*** This program, historically funded at \$170,000, would be eliminated under the Executive Budget. This program is housed within the Justice Center. Through contracted agencies, the program provides legal and non-legal advocacy services and training in residents' rights and self-advocacy to mentally disabled individuals residing in adult homes in NYC and on Long Island.
- ***Coalition of Institutionalized Aged and Disabled (CIAD):*** This organization, which advocates for residents of adult homes in NYC, is funded at \$75,000. The proposal includes a reappropriation of \$75,000 from the current fiscal year as well.
- ***Adult Home Resident Council:*** The Adult Home Resident Council Support Project, historically operated by Family Service League on Long Island, would be eliminated. Historically, it has been funded at \$60,000.
- ***Adult Home Quality Enhancement Account:*** The Executive Budget includes \$500,000 for State operations related to services and expenses to promote programs to improve the quality of care for residents of adult homes.
- ***Assisted Living Residence Quality Oversight Account:*** The Executive Budget appropriates \$1.68M, reduced from last year's level of \$2.1M. It also reappropriates \$2.1M from the current fiscal year for State operations for services and expenses related to the oversight of and licensing activities for AL facilities.

## Senior Housing

The Executive Budget does not renew for another five years the affordable housing and homelessness initiative as it enters its fifth and final year. However, it does continue funding to support full implementation of the plan through reappropriations. Among other initiatives, the five-year housing plan included \$125M in capital for affordable housing targeted to low-income seniors. While the five-year housing plan is not renewed in full, the Executive Budget does commit to another year of supportive housing through the Empire State Supportive Housing Initiative (ESSHI) with a \$250M investment toward the creation of 20,000 units over 15 years.

## Capital Allocations

The Governor's capital plan also recommends the following funding for programs:

- ***Access to Home Program:*** \$1M to provide funding for home adaptations for individuals with disabilities;
- ***Affordable Home Ownership Development Program:*** \$26M to construct or renovate homes for low- and moderate-income individuals and families;
- ***Homes for Working Families Program:*** \$14M to combine State funds with other available public and private sector moneys, federal Low-Income Tax Credit proceeds and non-State-supported bond funds to construct affordable rental housing for low- and moderate-income households;
- ***Housing Opportunities for the Elderly Program:*** \$1.4M to provide grants to low-income elderly homeowners for emergency home repairs;
- ***Low-Income Housing Trust Fund Program:*** \$44.2M to provide grants for the construction or renovation of low- or moderate-income single and multi-family housing projects;
- ***New York Main Street Program:*** \$4M to provide assistance to communities for the revitalization of historic downtowns, mixed-use neighborhood commercial districts and village centers;
- ***Manufactured Home Advantage Program:*** \$5M to fund loans and grants for the acquisition, demolition or replacement and/or repair of mobile or manufactured homes and/or mobile or manufactured home parks; and
- ***Public Housing Modernization Program:*** \$6.4M to subsidize repairs at State-supervised public housing projects across the state.

In addition to funding for the above-listed programs, the Executive Budget level-funds the Homeless Housing and Assistance Program (HHAP) at \$128M.

The Executive Budget would utilize \$63.4M in excess reserves from the Mortgage Insurance Fund to support the Neighborhood and Rural Preservation Programs (\$18.2M) and several homeless housing programs, including the Solutions to End Homelessness Program (STEHP), the New York State Supportive Housing Program and the Operational Support for AIDS Housing Program (\$45.2M).

## **Emergency Residential Tenant Late Fee Suspension and Security Deposit Utilization Act of 2021**

The Executive Budget would temporarily allow people impacted by COVID-19 to use their security deposits and any accrued interest to make future rent payments or pay toward rent that is in arrears, as well as prohibit residential landlords from charging or collecting late payments or fees until May 1, 2021. A tenant who uses their security deposit as a payment of rent would be required to replenish the security deposit at a rate of one-twelfth the amount used as rent per month no earlier than April 1, 2022.

### **COVID-19 Emergency Rental Assistance Program**

The Executive Budget advances the emergency rental assistance program supported by federal funds. The program will support households in rental arrears that have experienced financial hardship, are at risk of homelessness or housing instability and that earn less than 80 percent of area median income. The program would prioritize the unemployed and those with the lowest incomes.

### **Low-Income Housing Tax Credits**

The Executive Budget would increase the aggregate amount of low-income housing tax credits the Commissioner of Homes and Community Renewal (HCR) may allocate from \$104M to \$144M in \$8M increments annually for the next five fiscal years.

### **Repurposing Underutilized Commercial Space for Housing**

The Executive Budget proposes authorizing flexibility in zoning to address high commercial vacancy rates and underutilized hotel properties located within specified areas in NYC, particularly in response to the COVID-19 pandemic. This flexibility would be provided in exchange for dedicating a minimum of 20 percent of the units to affordable housing, operating supportive housing or contributing to a fund for affordable housing.

### **Clarification of Sales Tax Exemptions for HDFCs**

The Executive Budget would codify the eligibility of not-for-profit Housing Development Fund Corporations (HDFCs) that enter into a regulatory agreement with HCR or the NYC Department of Housing Preservation and Development (HPD) for a sales tax exemption to support the development of affordable housing. This would make clear that this exemption applies to not-for-profit HDFCs, regardless of whether the affordable housing project is affiliated with a for-profit, special purposes vehicle.

## V. PHARMACY

The Executive Budget includes the following provisions affecting pharmacy services:

- ***E-Prescribing:*** Effective Nov. 1, 2021, eliminates the exemption from the e-prescribing mandate for practitioners who have received a waiver from the Commissioner of Health based on technology limitations or economic hardship. Instead, the Executive Budget allows for an exemption from e-prescribing under exceptional circumstances as determined by the Commissioner. LeadingAge NY members may recall that the Commissioner has issued a blanket waiver annually for physicians issuing prescriptions for nursing home residents. It is unclear whether this authority will continue if this amendment is enacted. The Executive Budget also eliminates the exemption from e-prescribing requirements for practitioners who certify that they will not issue more than 25 prescriptions in a 12-month period. It preserves exemptions for temporary technology or electrical failures, for situations in which e-prescribing would cause a delay that would adversely impact the patient and for prescriptions to be dispensed in other states. The Executive Budget projects that this provision will generate a State savings of \$500,000 in FY22 and \$1.2M in FY23.
- ***Pharmacist Scope of Practice:*** Effective April 1, 2021, authorizes pharmacists to serve as “qualified health care professionals” under clinical laboratory statutes who are authorized to direct limited service laboratories and order and administer diagnostic tests. In addition, the Executive Budget authorizes insurance and Medicaid coverage of diabetes and asthma self-management education ordered or delivered by a pharmacist. It also expands the types of vaccines that pharmacists are authorized to administer to individuals age 18 and over to include any immunizations recommended by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention. These provisions would take effect April 1, 2021.
- ***Collaborative Drug Therapy Management:*** Expands the role of pharmacists in collaborative drug therapy management (CDTM) to authorize them to prescribe in order to manage or adjust a drug regimen in accordance with a non-patient-specific order as well as a patient-specific order. It also allows protocols governing CDTM to be issued by nurse practitioners as well as by physicians. Only pharmacists certified by DOH to participate in CDTM would be authorized to do so. The bill eliminates the requirement that the pharmacist have a Master of Science in Pharmacy or Doctor of Pharmacy degree and modifies the experience necessary to be CDTM-certified.
- ***Pharmacy Benefit Manager Oversight:*** Requires registration, licensure, examination and disclosure of pharmacy benefit managers (PBMs) that contract with health plans to manage their pharmacy benefits. Under the bill, PBMs must register with the Department of Financial Services (DFS) by June 1, 2021 and comply with certain disclosure and reporting requirements. As of Jan. 1, 2023, all PBMs must be licensed by DFS and comply with minimum standards related to unfair, deceptive and anticompetitive practices. They would be required to disclose conflicts of interest and would be subject to examination by DFS.
- ***Medicaid Coverage of Over-the-Counter Drugs:*** Allows DOH to modify, rather than merely add to, the list of non-prescription drugs covered by Medicaid without notice and comment. This proposal is estimated to save \$17.4M (all funds) in FY22 and \$34.8M in FY23.

- ***Prescriber Prevails:*** Once again, seeks to eliminate the ability of a prescriber to override a determination of the Medicaid Preferred Drug Program and secure Medicaid coverage of drugs that are not on the Medicaid preferred drug list. The bill also would eliminate prescriber prevails provisions governing Medicaid managed care plan coverage of non-formulary drugs in the atypical anti-psychotic, anti-depressant, anti-retroviral, anti-rejection, seizure, epilepsy, endocrine, hematologic and immunologic therapeutic classes. This proposal is estimated to save \$13.4M (all funds) in the coming fiscal year and \$53.7M in the following year.

## **VI. MARIJUANA LEGALIZATION AND REGULATION**

The Executive Budget once again includes a proposal, entitled the Cannabis Regulation and Taxation Act, to authorize adult-use cannabis for people age 21 and over. The proposal would also merge existing law for medical cannabis and cannabinoid hemp and would create and amend existing laws to legalize adult-use cannabis, consolidate governance of all forms of cannabis and create a regulatory structure to oversee the licensure, cultivation, production, distribution, sale and taxation of cannabis within New York State.

The bill establishes an Office of Cannabis Management (OCM) within the Division of Alcoholic Beverage Control as well as a Cannabis Control Board. The Board is charged with overseeing the adult-use, medical and cannabinoid hemp industries. The powers of this new office include the establishment of cultivation and processing standards, the licensure of all business entities in the production and distribution chain and the inspection and enforcement of program standards. The Board will promulgate regulations governing the production, processing, transportation, distribution, marketing, advertising and sale of medical cannabis, adult-use cannabis and cannabinoid hemp; the registration of organizations authorized to traffic in medical cannabis; the licensing and/or permitting of adult-use cannabis cultivators, processors, cooperatives, distributors and retail dispensaries; and the licensing of cannabinoid hemp processors and retailers.

Under the bill, the OCM will supervise the continued expansion of the medical cannabis program and ensure patient access and product affordability as well as encourage further medical cannabis research opportunities. Additionally, the bill extends the current medical cannabis excise tax provisions as well as the current revenue distributions for an additional seven years, provided that the previously unallocated portion (45 percent) of medical cannabis tax revenues will now be directed to the New York State Cannabis Revenue Fund.

This proposal establishes a social and economic equity program to encourage members of communities who have been disproportionately impacted by the policies of cannabis prohibition to participate in the new industry – providing technical assistance, training, loans and mentoring to qualified social and economic equity applicants.

The bill also provides a regulatory framework to comprehensively regulate cannabinoid hemp (CBD products), including the licensing, processing, extracting and retail sale of cannabinoid hemp. It includes production standards, testing requirements and product labeling provisions to safeguard the quality of cannabinoid hemp products available on the market.

This bill imposes two new State taxes on cannabis products: a wholesale THC-based tax and a cannabis retail surcharge. In addition, adult-use cannabis products would be subject to State and local sales and use taxes. Revenues from the State’s wholesale THC-based tax and cannabis retail surcharge will be deposited in the New York State Cannabis Revenue Fund for the following purposes: cannabis social equity fund; administration of the regulated cannabis program; data gathering, monitoring and reporting; the Governor’s traffic safety committee; the social and economic equity plan of the OCM; substance abuse, harm reduction and mental health treatment and prevention; public health education and intervention; research on cannabis uses and applications; program evaluation and improvements; and any other identified purpose recommended by the director of the OCM and approved by the Director of the Budget.

All counties, and cities with a population of 100,000 or more residents, will have the opportunity to opt out of the adult-use cannabis provisions of the bill with the passage of a local law, ordinance or resolution by a majority vote of their governing body. Municipal governments that allow cannabis licenses will be able to dictate the time, place and manner of operations through local zoning powers.

The bill includes provisions prohibiting landlords from refusing to rent to or from penalizing a tenant based on conduct permitted by state cannabis laws, subject to certain exceptions, including the possible loss of funds if the landlord allows cannabis use, a code of conduct based on religious belief and buildings on the smoke-free registry. It also permits employers to establish workplace policies, on notice to employees, prohibiting the use or possession of cannabis in accordance with the Labor Law and to take adverse action against employees who are under the influence of cannabis in the workplace. The bill further provides that a certified patient’s authorized use of medical cannabis must be considered equivalent to the use of any other medication under the direction of a practitioner and does not disqualify a patient from medical care.

This legislation is projected to raise \$20M in FY22, \$118M in FY23, \$162M in FY24, \$252M in FY25, \$350M in FY26 and \$374M in FY27.

## **VII. DATA ACCOUNTABILITY AND TRANSPARENCY ACT**

The Executive Budget proposes a new law to regulate the collection, use and disclosure of personal information by entities that control or process personal information of 100,000 or more consumers or derive over 50 percent of their gross revenue from the sale, control or processing of personal information. This law would not apply to personal information that is subject to the Health Insurance Portability and Accountability Act (HIPAA) or maintained for employment purposes, nor would it apply to de-identified information or public information. It would impose limits on the information that covered entities may collect and consumer notification requirements related to the collection and disposition of personal information. It would also require covered entities to respond to consumer requests for information about the personal information that covered entities collect or maintain and create consumer rights in relation to their personal information. This law would take effect two years from its enactment.

## **VIII. NEXT STEPS**

Following the Governor's budget presentation, Senate Finance Committee Chair Liz Krueger and Assembly Ways and Means Committee Chair Helene Weinstein announced the [schedule for the Joint Legislative Budget Hearings](#). These hearings provide an opportunity for the Legislature to hear from state agency heads and the public about the impact of the Executive Budget proposal. LeadingAge NY plans to testify virtually at the Health Budget Hearing on Wed., Feb. 3<sup>rd</sup> and provide testimony for the Housing Budget Hearing on Tues., Feb. 2<sup>nd</sup>.

On Fri., Jan. 22<sup>nd</sup>, LeadingAge NY hosted a 2021 Government and Virtual Advocacy Webinar to update members on the current political climate, state legislative procedures, what we can expect in the months to come and how members can engage in virtual advocacy. A recording of the webinar is available [here](#), and a copy of our slides is linked [here](#).

Although advocacy will look very different this year due to the pandemic and visitor restrictions at the Capitol, LeadingAge NY is coordinating four [Virtual Advocacy Days](#) to engage members in advocacy and address budget issues. **2021 Virtual Advocacy Days are scheduled for Feb. 4<sup>th</sup>, 5<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup>**. Advocacy Days will entail virtual meetings with lawmakers via Zoom or other virtual platforms and will require only a few hours of members' time.

LeadingAge NY strongly encourages members to begin setting up phone calls or Zoom meetings with legislators, particularly if their lawmakers sit on the Health, Aging, Housing or Finance Committees. If you are new to scheduling legislative meetings, LeadingAge NY has created [this helpful how-to Legislative Scheduling Guide](#) for your reference. Once you have your meetings scheduled, please send the details to Sarah Daly at [Sdaly@leadingageny.org](mailto:Sdaly@leadingageny.org) so that we can track our joint efforts. Additionally, please contact Sarah if you would like LeadingAge NY policy staff to join you in your meeting, if you would like to coordinate meetings with other providers in your area or if you'd like to strategize which additional lawmakers from your region you could reach out to for a meeting.

Advocacy Day materials, including issue briefs, talking points and other information, will be distributed to all members no later than Wed., Feb. 3<sup>rd</sup>. For full event details, please visit the [2021 Virtual Advocacy Days page](#) on the LeadingAge NY website.

Lastly, because the FY22 budget relies so heavily on federal relief, and because we still do not know when that relief will come or how much will be included, it is more critical than ever that members stay engaged in advocacy throughout the January-March budget cycle. Our message will likely evolve as the proposed budget evolves, and we will be sure to keep members updated.

Thank you for your hard work to protect and serve aging New Yorkers, and thank you in advance for your participation in advocacy.